

Nebraska Sales and Use Tax Guide for Prepared Food

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Web site: www.revenue.ne.gov

Other information guides you may need:

Bars, Taverns, and Restaurants
Food, Food Ingredients, and Dietary
Supplements



The purpose of this information guide is to explain the sales and use tax responsibilities for sellers of prepared food. It is not designed to answer all questions which may arise, but is intended to enable a person to become familiar with sales tax provisions related to prepared food.

Overview

Sales of prepared food are generally subject to tax. Prepared food is food intended for, and which is generally ready for, immediate consumption, either on or off the premises of the seller. Prepared food means food that meets **ANY** of the following conditions:

- A. Food sold with eating utensils (see page 2) provided by the seller, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item. Food that is combined by the seller includes self-service fountain drinks or Cappuccino from a self-service dispenser. Examples include meals, sandwiches, fountain drinks, and ice cream sundaes; or
- C. Food sold in a heated state or heated by the seller. Examples include hamburgers, rotisserie chicken, baked beans, soups, and coffee.

Establishments generally determined to be engaged in the sale of prepared food include, but are not limited to:

Sandwich Shops	Mobile Food Vendors
Cafes	Food Vendors in Sports/
Caterers	Entertainment Arenas
Cafeterias	Food Courts
Coffee Shops	Hot Dog Stands
Convenience Stores	Ice Cream Shops
Delicatessens	Juice Bars
Diners	Pizzerias
Fast Food Restaurants	Restaurants
Taverns, Grills, Bars	

Prepared food, unless sold with eating utensils provided by the seller, **does not** include:

- Food that is only sliced, repackaged, or pasteurized by the seller, other than caterers – such as luncheon meats, cheeses, meat and cheese trays, and fruits;
- Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the FDA – such as marinated meats;
- Food sold in an unheated state by weight or volume as a single item – such as bagged popcorn, and containers of deli salad;
- Food sold by food manufacturers; and
- Bakery items, such as bagels, bread, donuts, cakes, pies, and tortillas.

Sales by Delicatessens

All heated foods sold by a delicatessen, such as pizza, meat loaf, fried chicken, rice, macaroni & cheese, egg rolls, baked beans, soup, hot coffee, and potatoes and gravy, are prepared food and are taxable.

Sandwiches, whether packaged or unpackaged, **which are prepared by the seller**, fountain drinks, or soft serve ice cream are also taxable as prepared food.

Delicatessen foods maintained at room temperature or below, such as potato salad, cole slaw, fruit salad, olives, and pudding are not taxable when served in a container with a lid and measured and sold by weight or volume. These foods are taxable when sold as part of a meal, when catered, or when served on a plate or with a fork, spoon, or other utensils.

Sales by Convenience Stores

Convenience stores often sell both prepared food which is generally subject to tax, and food and food ingredients, which are generally exempt from tax.

Prepared food. All food sold by convenience stores in a **heated** state is taxable and includes items such as hot dogs, hot coffee, pizza, and pretzels. Food that is **heated by the purchaser** is not taxable even if using a microwave oven located on the seller's premises. Sales of fountain drinks are taxable.

Sales of food maintained at room temperature or cooler **are not taxable unless** the seller physically gives the customer an eating utensil with the food (see "Eating Utensils"). For example, sales of sandwiches, donuts, or cookies which are not packaged by the seller are exempt **unless** the seller's customary practice is to give a napkin, plate, or other eating utensil to the purchaser.

Food and food ingredients. Sales of food and food ingredients, **which are not classified as prepared food**, are exempt from tax. Food and food ingredients include staple foods such as milk, flour, eggs, meats, vegetable oils, gelatins, salt, ketchup, potato chips, candy, chewing gum, and soft drinks in bottles or cans (see Information Guide on Food, Food Ingredients, and Dietary Supplements).

Caterers

Individuals or businesses providing catered foods or beverages must collect sales tax on receipts from preparing or serving such foods and beverages. Charges for food, wages, bartenders, wait staff, chefs, use of dishes, room service, chairs, tables, etc., are taxable even though separately stated on the billing invoice. The tax applies whether the food is served by the seller or merely provided to the purchaser for consumption. Sales tax does not apply to separately stated charges for announcers, doormen, or other persons not connected with the preparation or serving of prepared food.

Concessionaires

Concession sales are sales of food and beverages made during the conduct of another event, such as a movie,

concert, sporting event, or craft fair. All concession sales of food and beverages are subject to tax, except those made by elementary and secondary schools. Concessionaires are permitted to include the sales tax in the selling price.

Vending Machine Sales

All food sold through a vending machine is subject to tax. The location of the machine determines the applicable **local option** (city or county) sales tax that applies to the sales. The gross receipts from vending machine sales includes the state and local sales tax. The sales tax does not have to be separately stated on vending machine sales.

Exempt Sales of Prepared Food

Sales and use tax does not apply to the following sales of prepared food:

- ✓ Certain meals and food served or sold by schools, school groups, churches, and organizations licensed by the State for the care of human beings;
- ✓ Meals and food sold at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees;
- ✓ Meals and food sold by residential facilities with communal dining rooms;
- ✓ Meals and food sold by organizations for the elderly, handicapped, or recipients of Supplemental Security Income authorized to accept electronic benefits transfer or food coupons; and
- ✓ Concession sales of food only when sold by elementary and secondary schools at school events.

Sales of Alcoholic Beverages

Sales of alcoholic beverages are taxable, whether sold packaged as "off-sale", or by-the-drink as "on-sale." Bars, taverns, and restaurants that hold a liquor license are permitted to include the sales tax in the selling price of beverages that are consumed on their premises. Sales of soft drinks from such establishments may be treated in the same manner.

Consumer's use tax is due on the seller's cost of alcoholic beverages provided free-of-charge.

Eating Utensils

Foods that do not fall into Categories B or C of the "Overview" above are taxable when sold with eating utensils provided by the seller. Eating utensils include plates, knives, forks, spoons, glasses, cups, napkins, or straws.

Eating utensils are deemed to be **provided by the seller** when:

1. The seller's customary practice is to **physically give the eating utensil(s)** to the purchaser;

For example:

- Bagels sold with eating utensils are taxable;
- Box or sack lunches with napkins or plastic forks included are taxable; or

2. More than 75 percent of the seller's total sales are sales of alcoholic beverages and prepared food described in Categories B and C of the "Overview" above and the utensils are **merely made available** to the purchasers at the time of sale.

For example:

- Individual bag of chips is taxable when napkins are available on a nearby counter.

If the eating utensils are provided by the manufacturer rather than the seller, the food is exempt. For example, a package of cheese and crackers that includes a spreader is not taxable since the spreader is provided by the manufacturer, not the seller.

Tips and Gratuities

When an amount or percentage for a tip or gratuity is set and added by the seller to the purchaser's bill, the total charge is taxable. Discretionary tips or gratuities given by the purchaser are not taxable even when charged to the customer's bill instead of the customer giving the tip directly to the server.

Employee Meals

Amounts charged to employees for prepared food are taxable even if they are discounted. If prepared food is provided to employees without charge, consumer's use tax is not due on the cost of the prepared food.

Records

Sellers must maintain adequate accounting records to distinguish taxable sales of prepared food from exempt sales of food and food ingredients.

Exempt Sales of Food or Food Ingredients

Bars and taverns which also sell a limited number of nontaxable food items, such as milk, cheese, and eggs, may sell such items exempt from tax when separate records are maintained.

The information shown on the customer's invoice or cash register tape should provide an adequate description of the nontaxable food items sold.

Purchases by Sellers of Prepared Food

The following items may be purchased tax-free by sellers of prepared food:

- Food, food ingredients, and alcoholic beverages that will be resold to customers. *Examples include: ingredients used to prepare meals, soft drinks, candy, chips, beer, liquor.*
- Single-use disposable food service items provided to the customers. *Examples include: paper napkins, paper place mats, straws, plastic utensils, foam and paper cups.*

Sales to Exempt Entities

Sales to entities that are exempt from sales tax must be supported by a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section B. A list of entities that are exempt from tax is provided in Nebraska Sales and Use Tax Regulation 1-012, EXEMPTIONS.

FOR NEBRASKA TAX ASSISTANCE

For All Tax Programs Except Motor Fuels

Contact your regional office or call **1-800-742-7474** (toll free in NE and IA)
or **1-402-471-5729**

Nebraska Department of Revenue Web site address: www.revenue.ne.gov

A copy of the Taxpayer Bill of Rights is available by calling any of our regional offices or visiting our Web site.

SCOTTSBLUFF

Panhandle State Office Complex
4500 Avenue I, Box 1500
Scottsbluff, Nebraska 69363-1500
Telephone (308) 632-1200

NORTH PLATTE

Craft State Office Building
200 South Silber Street
North Platte, Nebraska 69101-4200
Telephone (308) 535-8250

GRAND ISLAND

TierOne Bank Building, Suite 460
1811 West Second Street
Grand Island, Nebraska 68803-5469
Telephone (308) 385-6067

NORFOLK

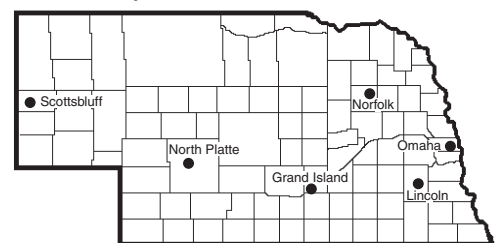
304 North 5th Street, Suite "D"
Norfolk, Nebraska 68701-4091
Telephone (402) 370-3333

OMAHA

Nebraska State Office Building
1313 Farnam-on-the-Mall
Omaha, Nebraska 68102-1871
Telephone (402) 595-2065

LINCOLN

Nebraska State Office Building
301 Centennial Mall South
Lincoln, Nebraska 68509-4818
Telephone (402) 471-5729



For Motor Fuels tax programs only call toll free 1-800-554-3835 (Lincoln residents call 471-5730).

Hearing-impaired individuals may call the Text Telephone (TT) at 1-800-382-9309. TDD (Telecommunications Device for the Deaf) is designated by the use of "TT," which is consistent with the Americans with Disabilities Act.